

Our company is making comment to the Mobilitie, LLC petition for a declarative ruling, because we have been asked by some of the communities to which we provide consulting services to do so. Mobilitie has recently made application to several cities for siting wireless infrastructure in their ROW's. The principals of our company have been working in the wireless industries for 20+ years and have been site acquisition, zoning and project management consultants for the largest carriers and their predecessor's in the Upper Midwest. We formed our company to primarily consult on practical telecom issues concerning local zoning implementation and modern wireless infrastructure deployment to local municipalities.

As Federal and State laws and the wireless technology have progressed, our principals had noticed that local community staff, in many cases, did not have the expertise to deal with modern wireless zoning and deployment issues. Also, we noticed that carrier-hired consultants were also lacking the expertise and knowledge to thoroughly discuss/explain the technology and deployment requirements to local community staffs and boards so that informed decisions about permitting and allocation of resources to wireless infrastructure could be made. We observed that, in many cases, it was due to the carriers not giving enough training to their representatives or the information was not given to the carrier's consultant, intentionally. We know that this is sometimes the case, because we experienced this first-hand while working as consultants for carriers. Our company's primary goal is to bring the information about the newest wireless infrastructure deployment to our client communities and help them revise their ordinances and procedures to deal with a wide variety of applications – all to be done effectively and according to the maze of laws and regulations. Therefore, our comments are based primarily on practical application problems experienced by local communities and not legal expertise of the Federal Code and State Statute Law.

Our company had been hired to deal directly with a Mobilitie application to install a 120' monopole with 4 microwave dishes in one of the ROW's controlled by one of our clients (see attached Mobilitie construction drawings). This ROW serves a commercial district, and because of the 56' wide high traffic road, the "green space" was quite limited. Mobilitie sent a consultant in to give city staff and our company representatives a presentation on the need for their wireless infrastructure to be placed in the ROW. The presentation dealt with primarily an overview of the need for small cell deployment, transport, and the coming wireless data transmission explosion.

After the presentation, we asked a lot of questions that the consultant had no answers for. Some of these were: What exact data are you transporting? Is the data from small cells, Macro cells, or is it back-haul data being transmitted across the community? From where are you receiving the data? Are you transmitting the data to another point? Are you going to need more sites than just the one presented? If so what are those locations? Why can't the pole go on the commercial property adjoining the ROW? Do you have plans to rent space on this pole for a macro site?

The consultant could not answer any of these questions, and he would not give us a contact person who could answer the questions. At the end of the presentation, a pre-application and construction drawings were submitted to the City for the proposed monopole. After reviewing the pre-application and drawings, Mobilitie was advised that an application for the monopole would not meet several of the performance standards within the City's ordinances. They were advised that if they wanted to proceed with a formal application they should contact the City for the required forms and submittal requirements and that they should attempt to conform to existing ordinances.

The issues that relate to any use of a community ROW's for wireless facilities and other utilities can be condensed down to availability of space and how to prioritize the usage of that space; safe use of the space as it relates to traffic flow; and proper compensation for the space used.

1. **Availability of Space.** The primary purpose and space utilization of most ROW's is the road bed, itself, and traffic control devices. Typically the left-over "green space" amounts to a total of 8' to 14'. In our client city that had the Mobilitie request for the 120' monopole installation, they already have located in their ROW's "green space" a power company, gas company, wireline telephone company, cable tv company, street lights, and six fiber companies. Given that the state of Minnesota requires 2' of separation in underground installations so that lines can be installed via machine digging (spacing less than 2' requires hand digging installation), all of the available ground space has already been allocated in most cases. The 120' monopole proposed by Mobilitie requires a minimum of 4' to 6' of ground space, which would interrupt the 2' corridor allocated of two or three other users.

For a number of years now, allocation of the ROW "green space" has to be limited and prioritized. In prioritizing the allocation, many cities have developed a system that prioritizes the usage of space accordingly: #1 Street usage and traffic control; #2 electric utility power; #3 street lighting; #4 natural gas utilities; #5 wireline telephone utilities; #6 cable TV lines; #7 fiber communication lines (most of the needed space for sanitary sewer, storm sewers, and water lines is allocated under the roadway part of the ROW). All of these utilities and services require corridors that access most of the private property within a city. Typically the only corridor that exists is the road ROW's. The wireless community does not need to utilize physical corridors on top of, or in the ground, for its main distribution, but can utilize the airspace high above the ground and over the top of private property creating airspace corridors by placing spot infrastructure within the community. Since the wireless community can be more flexible in their deployment, it would only make sense that their need to locate this spot infrastructure would be subordinate to the need of the utilities and services that do need physical continuous ground corridors. Even in the cases where power transmission lines and pipelines need ground corridors, a majority of them are located in private corridors negotiated with private landowners, because of the size of the structures and space limitations in public ROW's.

Priority wise, it only makes sense that wireless infrastructure requested use of the ROW be ranked lower than a number of other uses. Most cities have already allocated ROW space for wireless infrastructure backhaul by allowing installation of a number of fiber carriers. Is Mobilitie's request to provide for additional transport services a higher priority than those of Comcast, Arvig, Century Link, Hickory Tech, or AT&T who are already located in my client ROW's? Mobilitie's argument that it should have equal access to community ROW's when made to a local community is not very persuasive, simply because it is not based upon the reality of the situation. A community's decisions for placement of infrastructure in ROW's have to be prioritized because there is limited space, and those priority decisions need to be left to the local authorities who are in control of the ROW. If the FCC were to decide that wireless carriers, (and worse yet, an unlimited number of wireless carrier infrastructure companies) have equal access to community ROW's; would the FCC be prepared to evaluate

each community's ROW space limitations and pick which utilities get what allocation of space?

2. **Safety of use of Space.** Local communities have always had the primary authority in setting standards for the safety of its citizens. Previously, the FAA has left it up to local authorities to set performance standards for wireless structure deployments (except standards of RF emissions) to ensure public safety of installations. Many cities adopted standards that required minimum standards for setbacks of infrastructure to property lines and ROW's. While some of the standards have been too stringent in the past and needed to be relaxed, a 120' tower with a 44" diameter is a substantial structure that in most communities would require that it be set back a distance of the fall zone of the tower to a ROW. Our company has been urging some of its client cities to relax those to be the same as the ones established in the zoning district for all structures. Associated ground-mounted-equipment cabinets can also be a concern, because some of the proposed ground-mounted-equipment is substantially larger than other utility cabinets allowed in ROW's. Very few communities, if any, would allow the large structures proposed by Mobilitie to be built solely in the ROW a few feet off of a busy road.

The primary reason for this is safety considerations due to traffic running off roadways and into the ditch/boulevard. A vehicle crashing into 44" steel diameter pole or a refrigerator-size ground-mounted object is going to cause a lot of damage to the vehicle and its occupants. The higher the speed limit that is allowed, the more dangerous the situation would be. In the snow and ice belt, the situation is worse yet with slippery road conditions occurring frequently during winter months. This problem can be mitigated by installing protective guard rails, but that increases the space utilized in the "green space" by an additional 2'.

Also a concern is visual obstruction. A 44" diameter pole or a ground mounted cabinet would obscure vision more than the typical 12" to 18" diameter object in the "green space". If these structure installations are going to be mandated to be allowed in the ROW's, is there going to be spacing and pavement setback standards allowed to be adopted by the local authorities? Or would the carriers be permitted to put continuous structures at the road edge without any concern for sight line obscurity or crash safety? Would the FCC-mandated placements include standards that would be based upon the speed limit of the roadway the ROW supports such as: a 120' monopole could be placed 4' off the roadway that has a 30mph speed limit, but a 60 mph speed limit road would need to have the monopole setback 10'?

The final safety concern we would like to address is the issue of falling ice. Typically the snow/ice belt communities have not worried about the dangers of falling ice off a 20' to 30' tall structure that is 12" to 18" in diameter. The amount of ice collected and the distance the ice would fall of the structure typically do not cause any great hazard, but in special conditions it could cause some damage to roadway traffic. The case of the 120' monopole is quite different. If this pole were to be placed in an 8'-wide green space, it would only be about 4' off the roadway. Initially this site may have only microwave dishes on it, but what happens if another user comes along and wants to exercise its rights under Sec. 6409(a)?

The local community would have to allow up to a 12' height extension and a width increase of 6'. Under these conditions, the appurtenance added would be over the roadway and the bottom would be a good 120' high of the pavement. Now the potential for ice accumulation, breakoff and damage caused to vehicles on the roadway could be quite substantial. Carriers mitigate this damage to their ground equipment in proximity of their 100' plus structures by adding ice bridges over their ground equipment. If 120' monopoles are going to be mandated to be sited in ROW's, is the FCC going to mandate that the structure owners also provide for ice bridges over the roadway in the snow/ice belt regions of the US?

3. **Proper Compensation for use of space.** Many communities that Mobilitie has approached to install infrastructure into their ROW's have concluded the only reason that Mobilitie has picked those specific locations is that they think that a ROW location would be practically rent free. These conclusions were adopted because of Mobilities' insistence that only ROW locations would work for their installations, their refusal to consider co-locating their microwave equipment on existing wireless structures, and their refusal to negotiate franchise agreements similar to ones that local municipalities have negotiated with other utilities located in the ROW.

Mobilitie's claim that local governments are being discriminatory in their ROW fees towards them is not accurate. In fact the opposite is true. Mobilitie is trying to use the FCC to carve out a set of new rules that would give them priority over other utilities in terms of cost of space and priority of usage. In many communities we work with, franchise fees are collected from public utilities such as natural gas and electric power companies in the range of \$4 to \$5 per month per customer. In cases of cable TV and fiber communication companies, the fees are in the range of 4 to 5% of their gross income from customers in the community.

In addition to fees being charged, the franchise agreement also has terms that include that the utilities are required to be relocated at the expense of their owners if required by future roadway and community development. New, renegotiated franchise agreements are requiring that above-grade utilities be relocated to underground locations to clean up the visual clutter and to make communities safer. The idea that communities should subsidize a for-profit company like Mobilitie by renting space to them in public ROW's at rates as low as \$50.00 per year per installation is not realistic. These ROW's were not acquired by local communities free of cost. Sometimes the cost to acquire has been very high; especially in the cases where they were acquired through eminent domain procedures, and courts have mandated a high reimbursement.

Also, ROW's acquired through development agreements often contain either a large maintenance commitment or large offset credits. The cost of maintaining and replacing aging roadways are exploding. Most municipalities run on a non-profit basis. They struggle to meet budget commitments, and many are experiencing great difficulty delivering the basic services needed by their communities. For-profit wireless carriers and infrastructure companies should not be looking to communities to rent them the necessary space to operate their businesses at below-market rates. In the St. Paul/ Minneapolis metro area

carriers are negotiating small cell light-pole installations at approx. \$600.00 per year rent. In one major city, they want substantially more, so one of the carriers is renting light poles from private business owners at \$2000.00 per year. What is the market rate for light poles in this area; \$600.00 per year, or \$2000.00 per year? Is it either or somewhere in between? Is it fair to require that municipalities rent their structures located outside the ROW at a maximum rate of \$500.00 per year as recent State-of-Minnesota introduced legislation required (see attached State Of Minnesota House of Representatives HF#3554)?

Mobilitie's refusal to consider colocation possibilities to attach their equipment to is very suspicious. Most carriers have abided by the colocation requirements set by local municipalities. Sec 6409(a) was enacted specifically to allow for more colocation on existing wireless base station structures. Since these qualifying colocation applications are now mandatory to be approved and the approval shot-clock is only 60 days, why is Mobilitie not trying to colocate their transport equipment on the available structures? In their presentations to the cities that we have been at, they have never made any assertions that a colocation for their transport facilities would not work for technical reasons. When questioned why they have made no attempt to follow colocation requirements of local zoning codes, the responses have been very weak and typically they have said they have the right to install new structures in ROW's because they have registered with the State's Public Utility Commission as a private telephone company. Similarly, when asked why they can't locate their 120' monopoles on private property, their only response is their assertion that they have the right to locate in the ROW.

All of these actions leave the municipalities to conclude that the only reason Mobilitie is taking the actions that they have is that they are trying, in essence, to become a publicly subsidized wireless infrastructure company. If this becomes reality, Mobilitie could set up a very favorable economic business model and deliver their services to the wireless carriers at below-market rates. If this business model were to become statute, then what controls are there going to be to prevent every business entrepreneur to demand publicly subsidized property to be made available to them? What is to happen to all of the existing tower structures in the US? Will they be torn down and relocated to ROW's? They would almost have to be, because they would not be able to compete with structures located in ROW's. Is the next phase of the State and Federal requirements going to require municipalities to rent other public land and public structures to wireless carriers and their infrastructure companies at below market rates?

In conclusion, **we make the argument that the FCC should not make a declarative ruling on Mobilitie's petition primarily because the local municipalities are best suited to manage their ROW's, public land and structures, and adopt a governing set of ordinances to ensure public health and safety.**

In the past, the FCC has been very respectful of the local governing authorities. Mobilitie's assertion that this local control needs to be redefined because 5G is going to be so great that it is imperative that the FCC step in and limit those controls is suspicious. Yes, 5G may be great, but as with any technology advance it will need to be phased in. Some the principals in our company were involved in the industry in 2000 when carriers were at 2G and were promoting changes in local ordinances to enable 3G deployment. Restrictions such as 1000' setbacks for wireless tower structures from the nearest

residences were encountered and made deployment near small towns difficult. With time and education, those restrictions were relaxed due to grass roots pressure from local businesses and citizens. The promised 2003 rollout of 3G did not take place in most areas until 2010. We suspect 5G rollout will take a while also. First, the carriers have not even finalized their deployment standards, and when they get that into place, they will have capital and equipment deployment constraints. As 5G technology is rolled out, and if proven, communities will realize the increased benefits and their citizens and businesses will put pressure on local governing authorities to amend restrictions to allow more installations be placed closer to the end user.

The FCC has already taken steps to reduce the amount of time a local authority has to process a permit. Our company does not think that more time is needed to process permits for installations of multiple small cell project that are bundled together. However, the time required to process permits is shorter than the process required to negotiate the typical franchise agreement or lease. The primary reason for this is that many of the carriers will take months to counter language and lease rate proposals, especially if those decisions need to be escalated to national management. In any case the negotiating process takes time and cannot be put on a time-clock. The time could be shortened if rates and conditions were mandated, but that would in effect be the taking of one's property. The FCC shot-clocks have never been applied to permits required to locate facilities on municipal structures or property. Is Mobilitie asking for a shot-clock to be placed on municipal property permits and lease/franchise agreements negotiations? In our experienced, once the lease/franchise agreement is negotiated, the permits are most often granted expeditiously. The municipalities at that point would like to start procuring the rent and have no incentive to delay the permits. Substantial time will be saved when blanket lease/franchise agreements are negotiated with each municipality, if the carriers can come up with a "typical" installation. The carriers already do that with large infrastructure companies. Once a franchise or master lease agreement is negotiated, it is only a practical matter that the permits would be processed in a timely manner. However, efforts to hand-cuff municipalities by putting limits on the amount of processing and outside consultant fees, such as was proposed in MN HF#3554, will only extend processing times. Those limits would again force municipalities to subsidize permit applications and or slow down the permitting process. Wireless carriers and infrastructure companies hire a number of engineers and independent contractors/consultants to prepare and process their permit applications. Municipalities should be free to also hire independent contractors/consultants to help them review and process applications. Putting them in a situation where they would have to try and review/ process a number of small cell site permits with only a \$500.00 fee is not realistic.

Grass roots pressure to change deployment restrictions will always be more receptive to local communities than top-down regulation. If more time were spent educating local governments on wireless technology, and if wireless carriers and infrastructure companies would make more of an effort to communicate fully their needs for the present and the future, a working relationship can be developed, in most cases, that would benefit both the carriers and the communities to which they seek to bring services.

However, efforts such as Mobilitie and other companies to get the FCC or State Authorities to step in with a top-down solution in the name of profitability or speed to market are counterproductive. Wireless carriers and infrastructure companies should not expect the Federal and State Authorities to circumvent their need to properly educate local government authorities and negotiate fair, market rate

leases. It might take more time and money than what they wanted to spend, but the community-by-community education solution is the most fair and equitable one.